

IV Remarks

Section 112 Rejection of Claim 1

The action rejects claim 1 under section 112 for its use of the term resilient member. Applicant has canceled claim 1. The new claims do not use the objected to term. The 112 rejection should be withdrawn.

Claim Rejection Section 101, Obvious Type Double Patenting

The Action rejects claim 1 based on the judicially created doctrine of obviousness type double patenting. Applicant has cancelled claim 1. New claims 2 and 3 do not fall within the doctrine. They are towards components as opposed to the valve assembly as a whole. Moreover Applicant submits that the Doctrine no longer has applicability to Continuation cases. The courts developed the Doctrine to prevent an inventor from extending the life of its patent by obtaining a second patent that only has minor and obviousness variations from the first patent. Under the new rules however, a continuation case has the same term and expires at the same time as the parent case. Thus the present continuation case will terminate on the date of the parent. It is thus not possible for the inventor to extend the term of the parent patent by making minor variations. The rationale for a terminal disclaimer thus does not apply to the present continuation case. The requirement should be withdrawn.

Claim Rejections 35 U.S.C. section 103

. The Action rejects claim 1 as obvious in view of Surjaatmadja 445. Applicant has cancelled claim 1. The rejection of claim 1 is thus moot. New claims 2 and 3 include the limitations from claim 1 concerning the valve guides plurality of apertures. Applicant respectfully disagrees that the limiting feature of a plurality of apertures is obviousness in view of the 445 patent. In order for the feature to be obvious there must be a motivation found in the prior art to affect the change to the 445 patent. The prior art does not provide any such motivation. Nothing in the prior art suggests that there is a need to reduce pressure on the valve guide further than the relief provided by the single aperture. In fact the 445 patent indicates its single aperture provides the appropriate relief.

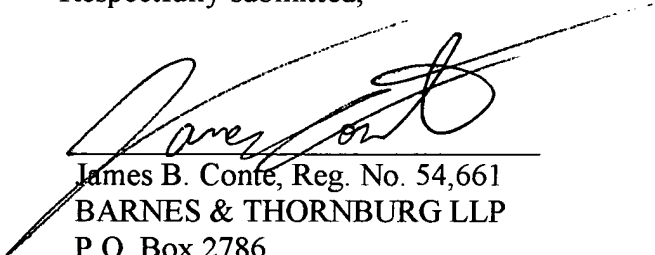
Applicant's additional apertures provide other advantages over the art beyond just that of reducing pressure. The apertures provide for the pump of the present invention to run with higher levels of sediment build up than prior art pumps. The prior art pumps when a certain amount of sediment passes through could experience a blockage of the valve guide's aperture. The blockage requires the shutting down of the pump. Applicant's additional aperture can act as a bypass for the clogged aperture thus allowing the pump to continue operating. The prior art simply makes no mention of using additional apertures to reduce problems associated with sediment buildup. The additional advantage is not taught in the prior art. Indeed it was not appreciated by the examiner. As the advantage is not obvious, the aperture which provides the advantage cannot be considered obvious. Claims 2 and 3 are allowable over the art.

V Conclusion

Applicant has addressed each of the issues raised in the action. The claims are patentable over the cited art. A notice of allowance should now issue.

Dated: January 18, 2005

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James B. Conte", is written over a horizontal line.

James B. Conte, Reg. No. 54,661
BARNES & THORNBURG LLP
P.O. Box 2786
Chicago, Illinois 60690-2786
(312) 357-1313